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February 11, 2004

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State Engineer  
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Dear Mr. Olds:

I have recently been contacted by the Hanks Family Ranch LP (hereinafter the "Hanks") regarding several issues of concern with respect to the administration of water rights along the Burnt Fork and Beaver Creek drainages in Summit/Daggett Counties. On December 10, 2003, I met with Lee Sim, Utah Assistant State Engineer, to discuss these issues. The purpose of this letter is to bring these matters to your attention in hopes of reaching a resolution.

The Hanks are Wyoming water users with both Utah and Wyoming irrigation rights along Burnt Fork and Beaver Creek and storage rights in Hoop Lake. Over the past several irrigation seasons, the Hanks have been concerned with the manner in which the water is being administered along Burnt Fork and the detrimental effects that this mismanagement has had on their interests. The Hanks' principal concerns are set forth below.

#### Enforcement of the Irrigation Season

The irrigation season has not been strictly enforced within the Burnt Fork drainage. The irrigation season within the Burnt Fork drainage runs from May 15<sup>th</sup> to October 15<sup>th</sup>. With few exceptions, no rights to water can be taken prior to the commencement of the irrigation season. It has become evident that the May 15<sup>th</sup> commencement date is not being enforced, and for the past several years, irrigation water along the Burnt Fork drainage has been turned onto lands prior to May 15<sup>th</sup>.

#### Enforcement of the Duty of Water

The duty of water is not being enforced within the Burnt Fork drainage. Water users within Burnt Fork have been permitted to divert water for periods in excess of what is required to apply the three acre-feet per year duty of water to their lands. As a result, upstream water users within Burnt Fork are exceeding their water allocation at the expense of the downstream and lower priority water users' rights.

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Jerry D. Olds  
February 11, 2004  
Page 2

In addition, water users have been permitted to take a full allocation out of Burnt Fork and, in addition, augment that allocation with water contributions and inflows from other sources such as Baldy Springs, Chase Springs, and Birch Creek. In several instances, additional filings from sources such as Birch Creek supplement flows to grounds currently receiving a full allocation from Burnt Fork. Utah law requires that the three acre-feet duty of water be accounted for from "all sources." This accounting is not occurring along Burnt Fork, resulting in excess flows to lands to the detriment of other water users holding valid water rights.

The duty of water must be enforced along the Burnt Fork drainage. This will require both strict enforcement of the diversion periods and an accounting of flows and diversions from all sources.

#### Storage in Hoop Lake

The failure to enforce the May 15<sup>th</sup> commencement date and the duty of water has resulted and will continue to result in harm to the Hanks' water rights in Burnt Fork and Beaver Creek and their storage right in Hoop Lake. From October 15<sup>th</sup> to May 15<sup>th</sup>, the storage in Hoop Lake is generated by flow from Thompson Creek (a tributary of Burnt Fork). Once the irrigation season starts, the water from Thompson Creek is turned away from Hoop Lake and flows down the Burnt Fork drainage. Additionally, in accordance with the practice along Burnt Fork, once natural flow rights have been satisfied along Burnt Fork, the water in Thompson Creek is diverted away from Burnt Fork and back into Hoop Lake for storage. The storage in Hoop Lake is dependant on the flow from Thompson Creek prior to May 15<sup>th</sup> and after all of the water rights along Burnt Fork are filled. The failure to enforce the water use in Burnt Fork has resulted in diminished storage in Hoop Lake.

Of additional detriment to the storage in Hoop Lake is the failure to properly enforce the storage rights in Island Lake, located at the head of Burnt Fork. A memorandum issued by Donald C. Norseth (Utah DNR Directing Engineer) on May 28, 1982, set forth that "[the State of Utah's] policy on this matter is that if the natural flow rights are satisfied, then Hoop Lake should be allowed to store the same as Island Lake. If no water is available for storage, then both Hoop Lake and Island Lake must be shut off." (See enclosed). Over the past several irrigation seasons, the State's mandate has been ignored and flow to Island Lake has continued all spring, well past the May 15<sup>th</sup> shut off date. This is in direct violation of the 1982 memorandum issued by Donald C. Norseth.

As a result of the failure to enforce the irrigation season within the Burnt Fork drainage, water that would otherwise go to storage in Hoop Lake prior to May 15<sup>th</sup> is improperly being turned down Thompson Creek and Burnt Fork. Additionally, the failure to enforce the duty of



Jerry D. Olds  
February 11, 2004  
Page 3

water on lands within Burnt Fork has increased the period required to fill the water rights within the Burnt Fork drainage, delaying the date that the flow from Thompson Creek can be returned to Hoop Lake for storage. This situation has become so severe that over the past few seasons, the storage in Hoop Lake has been significantly limited.

#### Regulation of West Beaver Creek

The Hanks are also concerned about the apparent lack of regulation of West Beaver Creek. Over the past several irrigation seasons, the greater part of the flow in the creek has failed to reach the main channel of Beaver Creek as a result of illegal diversions and other obstructions. In lieu of undertaking regulation of West Beaver, a futile call has been made despite the fact that a small, albeit severely diminished, flow of water continued down the full length of the creek.

Several beaver dams along West Beaver Creek are having an affect on water flows, preventing West Beaver from reaching the confluence of Beaver Creek. The east, west and middle forks of Beaver Creek combine to form Beaver Creek. Over the past few years, several beaver dams have developed on West Beaver Creek on property owned by the Lyman Grazing Association. The dams have caused water that would otherwise flow into Beaver Creek to disperse onto the Lyman Grazing property, with no return flow. The Hanks indicated that the flow last summer through the dams was reduced substantially, prompting the inappropriate futile call to be issued on West Beaver.

Unauthorized and unregulated diversions along West Beaver have also contributed to the diminished flows in Beaver Creek. Fallen Creek, a tributary to West Beaver, has a stock watering right only. Despite this fact, water users have constructed a large ditch, without headgates or flumes, and diverted the total flow of the creek. Other diversions along West Beaver have no headgates or flumes and several users have taken the liberty to diverting water irregardless of rights or allocation.

Although the Hanks' right does not come specifically from West Beaver, the Hanks' interests have been harmed. The beaver dams, futile call, and illegal diversions have essentially eliminated the contribution of West Beaver to the flow of Beaver Creek, significantly decreasing the overall flow of the latter. However, despite the reduced contribution from West Beaver, upstream users with rights specifically in West Beaver Creek have continued to divert water from Beaver Creek, reducing the overall flow. Consequently, the diminished flows in Beaver Creek have been insufficient to meet the Hanks' valid right.



Jerry D. Olds  
February 11, 2004  
Page 4

#### Proper Administration of Diversion Flow Rate

At the present, the Burnt Fork water users are erroneously being permitted (and instructed) to increase the flow rates at the point of diversion to account for conveyance losses and to ensure the appropriated flow rate at the land. As a result, many of the water users along Burnt Fork are increasing flows at the headgate diversions beyond the flows lawfully appropriated in order to account for ditch and evaporation losses.

Contrary to the manner in which Burnt Fork is currently being administered, the specified flow rate as set forth in the allocation schedule should be applied and maintained at the diversion point (i.e. the headgate along the stream), and not the land. The flow rate to the land should equal the appropriated flow rate (the flow rate at the headgate), less transit losses. The allowance for conveyance losses should be accounted for by increasing the duration of the flow to the land, not by increasing the flow rate at the stream headgate.

The current practice along Burnt Fork of increasing the flow rate above the appropriated flow right assigned to the land in order to make up for transit losses is inconsistent with the general principles of water law, and results in a serious detriment to the downstream water users.

#### Indian Creek Contribution to Burnt Fork

Of additional concern is the continuing diversion of water from Burnt Creek based on the full historic inflows from Indian Creek, despite the recent diminished contribution of Indian Creek to the Burnt Fork drainage. Three irrigation diversions from Burnt Fork are based on the flow from Indian Creek. (see WR #41-1471, #41-1315, and #41-1472). The combined flow of these three water rights is equal to 3.1 cfs. However, over the past few years, the flow from Indian Creek into Burnt Fork has been significantly less than 3.1 cfs. Despite the diminished inflow from Indian Creek, the holders of the above rights have continued to divert flows from Burnt Fork equal to approximately 3.1 cfs. These diversions have adversely effected the Hanks' water right interests, as well as the interests of other downstream users.

#### Notice of Delivery Schedule and Record of Distribution

A contributing factor to the problems within the Burnt Fork and Beaver Creek drainages is confusion over the delivery and distribution schedule. Updated water allocation records must be provided for the users setting forth the flow rates, days of use available, and when the three acre-feet has been delivered. The failure to provide these records has severely hindered the management of the Beaver Creek and Burnt Fork drainages and fostered misunderstandings between the water users.



Jerry D. Olds  
February 11, 2004  
Page 5

### Conclusion

The rights and interests of the Hanks Family Ranch LP have been harmed as a result of the manner in which the Burnt Fork and Beaver Creek drainages have been improperly administered. Accordingly, the Hanks Family Ranch LP requests that the Utah State Engineer undertake any and all necessary actions to ensure that the following occurs:

1. Strict enforcement of the irrigation season;
2. Strict enforcement of the three (3) acre-feet per year duty of water, to include increased enforcement of water diversion periods and point of diversion flows;
3. Full accounting of flows to authorized lands from all sources and corresponding adjustments to diversions from Burnt Fork to account for inflows to lands from supplemental sources;
4. Removal of all unauthorized diversions and beaver dams along West Beaver Creek to protect appropriated water flows, including any necessary coordination with the Division of Wildlife Resources and regulations requiring adequate flumes at authorized locations (a futile call should not be made along West Beaver in lieu of proper regulation);
5. Regulation of storage in Island Lake in accordance with the filed application.
6. Provide delivery schedules and reports for water allocation.

Please advise me if, for any reason, you do not agree with the facts or issues set forth in this letter. Otherwise, we will look forward to and expect your cooperation in resolving these issues in a manner that will protect and preserve the Hanks' valid water rights in Burnt Fork and Beaver Creek drainages.

Respectfully,

Richard R. Hall

cc: Lee Sim  
Bob Leake  
Jade Hendersen  
Clyde Hanks

Enc.